



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Kuhnel Company, Inc.

**File:** B-240624

**Date:** December 4, 1990

Clarence Kuhnel, Jr., for the protester.  
Paul M. Fisher, Esq., Department of the Navy, for the agency.  
Katherine I. Riback, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Procuring agency properly considered misplaced acknowledgment of solicitation amendment where record establishes that the acknowledgment was deposited at the government installation 2 days prior to bid opening and was misplaced by the agency, but was in the agency's possession until it was found, and it was discovered prior to award.

### DECISION

Kuhnel Company, Inc. protests the award of a contract to Glasson Construction, Inc. under invitation for bids (IFB) No. 62472-89-B-0428, issued by the Naval Facilities Engineering Command for the provision of life safety equipment at the Naval Station, Philadelphia, Pennsylvania. Kuhnel contends that Glasson, the low bidder, failed to timely acknowledge a material amendment to the IFB.

We deny the protest.

The IFB was issued May 24, 1990, with a June 26 bid opening date. This bid opening date was extended to July 5 by amendment No. 2, which also contained certain wage rate modifications. At the July 5 bid opening it appeared that although Glasson had submitted the low bid, it had failed to acknowledge amendment No. 2. On August 7, the contract specialist contacted Mr. Glasson, who stated that he had hand-delivered his original bid on June 26 and the amendment acknowledgment on July 3. The contract specialist was unable to verify Glasson's visit to the installation on June 26 because Glasson had not signed the visitor's log for that

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date.<sup>1/</sup> The original bid envelope, which would establish the time and date of receipt, had been discarded by the contract specialist after bid opening. Glasson's visit on July 3 was substantiated by the visitor's log, which lists the purpose of his visit as "bid." The amendment acknowledgment was not located by the agency until August 14, when the contract specialist noticed Glasson's envelope in the bid box attached to several sealed government estimate envelopes. Glasson's envelope, which was marked "Rec'd 7/2/90 3:02," contained a modification reducing the bid price by \$5,000 along with acknowledgment of amendment No. 2. The agency has submitted an affidavit by the bid room procurement clerk stating that she now recognizes that she inadvertently marked the acknowledgment envelope as received July 2 rather than July 3.<sup>2/</sup> She states that the acknowledgment was definitely received prior to the July 5 bid opening date.

The contracting officer determined that the evidence established that Glasson timely delivered the acknowledgment and that it would have been opened at bid opening but for its misplacement by the agency. The agency determined that consideration of the acknowledgment was proper because it was timely delivered and remained in control of the agency up to the time that it was discovered. The agency therefore awarded the contract to Glasson as the low, responsive bidder and this protest followed.

Initially, Kuhnelt protested that Glasson failed to acknowledge amendment No. 2. After receiving the agency report, Kuhnelt hypothesized that the absence of the original bid envelope with a time/date notation coupled with the absence of any record of Glasson's visit in the log book, suggests that Glasson did not deliver his bid on June 26, and Kuhnelt now contends that Glasson delivered his original bid on July 3 and then delivered his amendment acknowledgment some time after bid opening.

Since the amendment is part of the bid, a misplaced amendment acknowledgment is governed by the procedures concerning misplaced bids. See Cassidy Cleaning, Inc., B-212196, Nov. 22, 1983, 83-2 CPD ¶ 608. We have stated that a misplaced bid may be considered for award if: (1) the bid was

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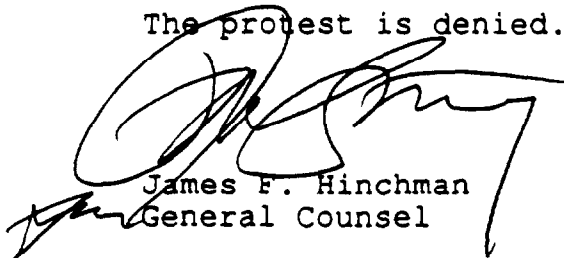
<sup>1/</sup> The agency states that the installation did not have a full-time receptionist during this period and it was possible that not all visitors signed the log book when entering the installation.

<sup>2/</sup> The agency also has explained that the time/date notation was handwritten rather than stamped because the mechanical time/date stamp was inoperable on the date in question.

received at the installation prior to bid opening, (2) it remained under the agency's control until discovered, and (3) it was discovered prior to award. T & A Painting, Inc., B-233500.2, Apr. 11, 1989, 89-1 CPD ¶ 369. In making the determination of whether such a bid may be considered, the time of receipt at the installation must be established. Id.

Here, the time/date notation on the envelope of the acknowledgment, as clarified by the bid room clerk's affidavit, along with the signature of Mr. Glasson in the visitor's log book, establish that the acknowledgment was delivered at 3:02 on July 3. The agency correctly concedes that its own mishandling was solely responsible for the acknowledgment being misplaced until after bid opening, and the record establishes that the Glasson acknowledgment was timely received by the agency and remained under the agency's sole control until its discovery. There is no evidence in the record which supports Kuhnle's hypothesis that the acknowledgment was received after bid opening. Accordingly, the agency properly considered Glasson's bid.

The protest is denied.



James F. Hinchman  
General Counsel